



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
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IN THE MATTER OF THE JOINT PETITION
OF UTILITIES, INC. AND MONTAGUE)
WATER AND SEWER COMPANIES FOR
APPROVAL OF A CHANGE IN CONTROL OF
CERTAIN NEW JERSEY PUBLIC UTILITIES

WATER

DECISION AND ORDER

DOCKET NO. WM05090800

(SERVICE LIST ATTACHED)

BY THE BOARD:

On September 1, 2005, Montague Water Company ("Montague Water") and Montague Sewer Company ("Montague Sewer") (collectively "MW&S") public utility companies located in the State of New Jersey, and Utilities, Inc., the parent company of MW&S ("Joint Petitioners"), filed a Verified Joint Petition ("Joint Petition"), with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1, requesting that the Board approve the Stock Purchase Agreement ("Agreement"), dated May 14, 2005, between Hydro Star, LLC, a Delaware Limited Liability Company ("Hydro Star"), and Nuon Global Solutions USA B.V., a private limited liability company formed under the laws of the Netherlands ("Nuon"). The Agreement provides for the indirect acquisition by Hydro Star of equity ownership of Utilities, Inc. by acquiring all of the issued and outstanding shares of Nuon Global Solutions USA, Inc., ("Nuon USA"), direct parent of Utilities, Inc., now owned by Nuon.

PROCEDURAL HISTORY

Utilities, Inc. is a corporation of the State of Illinois with its principal offices located in Northbrook, Illinois. Utilities, Inc. provides water and wastewater services to more than 300,000 residential customer equivalents in 16 states, including New Jersey. Utilities, Inc. is the direct owner of all issued and outstanding capital stock of Montague Water Company and Montague Sewer Company. Montague Water Company provides service to 712 end use water customers in Montague Township. Montague Sewer Company provides service to 226 active sewer service connections in Montague Township.

Hydro Star, a Delaware limited liability company, is a subsidiary of AIG Highstar Capital II, L.P. ("Highstar II"). Highstar II is a group of private equity funds that invest primarily in energy infrastructure and related assets and businesses, including the water and wastewater industries. Highstar II is sponsored by AIG Global Investment Group, an indirect subsidiary of American International Group, Inc., ("AIG") with its principal office located in Houston, Texas. According

to Utilities Inc., this means that in the case of AIG and Highstar II, AIG stands behind the obligations of AIG Highstar II GP, L.P., the general partner of Highstar II.

The Joint Petition seeks the Board's approval of an Agreement which provides that Hydro Star will acquire the stock of Utilities, Inc., the parent of MW&S, through its ownership of Nuon, USA.

The Agreement provides that all of the issued and outstanding common stock of Nuon USA will be acquired by Hydro Star in exchange for cash consideration. This will make Hydro Star the sole shareholder in Nuon USA which owns all of the issued and outstanding shares of Utilities, Inc. Under the terms of the Agreement, Utilities, Inc. will continue its corporate existence as a wholly-owned subsidiary of Nuon USA.

The Joint Petitioners filed their petition seeking approval of the transaction under N.J.S.A. 48:2-51.1, which provides that:

No person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliate or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void.

The Joint Petitioners also provided information required by N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10.

STIPULATION

Since the filing of the Joint Petition, Board Staff and the Ratepayer Advocate ("RPA") served extensive and detailed discovery requests for information and supplemental requests upon the Joint Petitioners, which were responded to by the Joint Petitioners.

A public hearing was held by the Board on November 19, 2005 at the Municipal Building in Montague Township for the purpose of receiving comments from the public on the proposed transaction. Legal Specialist Joseph Quirolo, Esq., presided over the hearing. At the public hearing, counsel to the Joint Petitioners made a presentation describing the proposed transaction. Mayor Joseph Barbagallo, of Montague Township, appeared and asked a number of questions regarding rates and economics, but did not oppose the stock sale. No motions to intervene were filed.

Subsequently, the Joint Petitioner, Board Staff and the RPA (collectively, "the Parties") engaged in settlement discussions and entered into a Stipulation. The Parties agreed that the Joint Petition, exhibits, the responses to data requests, and the transcripts of the public hearing should be included as part of the record in this case, and recommended that the Board make the necessary determination to approve the Stipulation resolving this Joint Petition based on the record to this proceeding which the Parties state provides sufficient credible support for the Stipulation.

In recommending that the Board adopt the Stipulation, the Parties noted that in considering the factors set forth in N.J.S.A. 48:2-51.1, they were mindful of the fact that the utilities in question are water and sewer monopolies. With regard to the information evaluation required under N.J.S.A. 48:2-51.1 and based upon the Joint Petition, discovery, and conferences among the Parties, the Parties stipulated to the following:

Competition: MW&S will continue to operate in their current franchise territories under the same market conditions which currently exist. Montague Water serves about 712 customers in a portion of Montague Township, Sussex County and Montague Sewer provides 276 of the water customers with sewer service. As noted below, the principal reason for the transaction is to provide MW&S and Utilities, Inc. with a stronger, more viable competitive position. Hydro Star's financial expertise and experience will enable MW&S and Utilities, Inc. to compete more effectively for capital and human resources than the prior, foreign owner. Furthermore, Utilities, Inc. will be better able to compete for the provision of water services to small, troubled systems which have been its traditional market, and to municipalities interested in transferring their systems or their service obligations to private water companies, and for the potential acquisitions of other small water companies.

Customer Rates: The transaction will not have any impact on the existing rates for MW&S. MW&S will continue to operate under their existing tariffs and rate structures; Hydro Star's access to capital and commitment to system improvements will assure that customers will receive fair value. There will be no immediate changes in their balance sheets or financial positions as a result of this transaction. Future rates will be dependent upon the results of operations of MW&S and any actions taken by this Board with respect to any rate application.

Employees: Operating personnel will remain the same, but Hydro Star's new management team is better situated than the prior foreign managers to lead MW&S and Utilities, Inc. In the absence of approval of this transaction, MW&S will be left under the ultimate ownership and control of Nuon, a diversified energy company operating only in Netherlands, Germany and Belgium, that seeks to divest its ownership interests in these two New Jersey utilities in the water and wastewater business. Local ownership will be more focused on service and financial issues. The Agreement does not contemplate any changes in the existing management and officers of Utilities, Inc. or MW&S, but does provide (i) that existing employee benefits or substantially similar benefits will continue for a period of at least two years; (ii) that Utilities, Inc. employees will receive full credit for service if and when they become covered by a Hydro Star benefit; (iii) that any "pre-existing condition" limitation contained in a Hydro Star plan will be waived as to Utilities, Inc. employees; and (iv) that all prior deductible payments made by Utilities, Inc. employees will be recognized by Hydro Star.

Provision of Safe and Adequate Service: Overall, Hydro Star will provide better incentives for maintaining and improving service than an absent, foreign owner. First, approval of this transaction will leave MW&S under the Utilities, Inc. umbrella; able to avail themselves of the accumulated expertise and capital strength of that entity, as well as the financial expertise, access to capital markets and prior regulatory experience of the Highstar entities. Furthermore, the Parties agree that the transfer of control will, among other things: (1) return ultimate ownership and control of MW&S to a local, that is United States, entity rather than a foreign corporation; (2) provide improved access to growth and expansion capital; (3) transfer ownership to a motivated owner; and (4) continue the association of MW&S with utilities with Utilities, Inc. management. Indeed, the association of these two companies with Hydro Star will benefit the employees and shareholder of Utilities, Inc. and will promote the public interest by returning ownership of Utilities, Inc.'s valuable infrastructure assets to a U.S.-based company the investments of which in other infrastructure assets will help to assure continued security and increase opportunities for internal and acquisition growth in the water and wastewater market through additional investment.

Although the petition was not filed under N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10, the Parties considered the requirements of those sections. The regulations require applicants to provide information regarding the reasons for the stock transfer, an explanation of any anticipated

changes in the board of directors, officers, managers, and company policies and a description of the qualifications of management. The Stipulation further provides that, with regard to the information required under N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10, the Joint Petition, discovery, and conferences among the Parties establish:

Reasons for Transaction: The principal reason for the stock transfer is to provide Utilities, Inc. and MW&S with a stronger, more viable competitive position. The purchase of Nuon USA by Hydro Star complements Highstar II's existing infrastructure portfolio. Highstar II's limited partners seek investments in stable businesses with relatively predictable, steady cash flow; characteristics that make the investment by Highstar II in Utilities, Inc. consistent with its investors' mandate.

Management, Officers and Board of Directors: The Agreement does not contemplate any changes in the existing management and officers of Utilities, Inc. or MW&S. MW&S will continue to have proven management experience and capability to provide safe, adequate and proper service to the public.

No Change in Utility Policies: The Agreement does not contemplate any immediate changes in MW&S policies with respect to service to customers, employees, operations, financing, accounting, capitalization, rates, depreciation, maintenance, or other matters affecting the public interest or utility operations.

Qualifications of Management: The Agreement does not contemplate any changes in the existing management and officers of either Utilities, Inc. or MW&S. As stated above, MW&S will continue to have proven management experience and capability to provide safe, adequate and proper service to the public.

In the Stipulation, the Parties requested that the Board approve the Stipulation in its entirety and issue an appropriate Decision and Order adopting the Stipulation and granting the relief sought in the Joint Petition, subject to the conditions as set forth therein, which have been incorporated in the Board's findings and orders below.

The Board, having considered the record in this matter, HEREBY FINDS that:

The proposed transaction is in accordance with law and, with the implementation of the provisions set out in the Stipulation as conditions to this Order is in the public interest. The proposed conditions set forth in the Stipulation entered into by the Parties appear reasonable and appropriate and, in conjunction with existing statutes, provide the Board with sufficient means to properly regulate the operations of MW&S. In considering the proposed transaction and the criteria required to be evaluated by N.J.S.A. 48:2-51.1, particularly as to the impacts on competition, rates of ratepayers affected by the acquisition of control, and the provision of safe and adequate utility service at just and reasonable rates, the Board is mindful that the affected utilities provide services to customers in their franchise territories, which are subject to traditional public utility regulation as noncompetitive, monopoly services, and that no reduction in the number of providers of competitive services or other risks to a competitive marketplace are at issue in the Board's consideration herein. In the circumstances presented herein, and based upon the record in this proceeding and subject to the conditions set forth in this Order, the Board finds that positive benefits to customers and the State, as more fully described in the Stipulation and set forth above, will result from approval of this transaction. Furthermore, there will be no adverse impact on any of the criteria set forth in N.J.S.A. 48:2-51.1.

After careful review of the record of this proceeding including the Joint Petition, exhibits, the transcript of the public hearing, and the Stipulation of the Parties, the Board HEREBY ADOPTS

the Stipulation attached, hereto, as its own, incorporating by reference the terms and conditions as if fully set forth at length herein. The conditions set forth in the Stipulation, which the Board HEREBY ADOPTS and ORDERS, are as follows:

- a) Petitioners shall not allocate, push down, or assign any purchase, goodwill or any premium reflected in the purchase price of the stock to MW&S, either directly or indirectly, for ratemaking purposes. Such items shall not be passed on to or funded by customers of MW&S after the proposed transaction. No acquisition adjustment amount, as defined in the Board-approved Uniform System of Accounts, related to the within transaction, shall be recovered from the customers of MW&S.
- b) If any sale by Hydro Star of the stock or assets of MW&S, Utilities, Inc. or Nuon USA result in a proposed acquisition adjustment to the rate base of MW&S, then any adjustment made at the time of the sale will be for accounting purposes only and not for ratemaking purposes. A decision as to the impact of the acquisition on New Jersey ratepayers will be made by the Board in the next base rate case filed by MW&S following the sale. In the next base rate proceeding MW&S shall have the burden of demonstrating whether, and to what extent, the costs associated with this transaction should be allocated to MW&S customers.
- c) No transaction costs (financial, legal, change in control agreement payments and investment services), shall be passed on to, recovered from, or funded by customers of MW&S. No administrative costs incurred by Hydro Star nor any of its general or limited partners, will be allocated to MW&S, either directly or indirectly from other subsidiaries or affiliates.
- d) Subject to the execution, where appropriate, of acceptable confidentiality agreements, the Joint Petitioners shall provide the Board and the RPA reasonable access to the books and records of Utilities, Inc. and to the books and records of any of its regulated or non-regulated subsidiaries or affiliates, for the purposes of review of whether there has been a proper allocation of costs to MW&S. or for any other purpose the Board may deem appropriate. Nothing, herein, shall be construed to limit the authority of the Board pursuant to N.J.S.A. 48:2-16 et seq.
- e) MW&S shall maintain all applicable water quality standards and to maintain or improve water and sewer service standards including, but not limited to, the following: service related interruptions and employee response time thereto, and customer complaint and customer inquiry response time. MW&S shall maintain adequate resources to continue to be responsive to questions from customers and regulatory agencies.
- f) Upon closing of the transaction, Joint Petitioners shall inform the Board of the date of which the change in control shall have been consummated.
- g) In the next rate proceedings, should MW&S seek to recover in rates costs allocated by Utilities, Inc., its parent, or any of its subsidiaries or affiliates, MW&S shall provide the Parties with a written explanation, supported by sufficient credible evidence, of the method of allocating such costs.
- h) Subject to the execution, where appropriate, of acceptable confidentiality agreements, copies of the tax returns of Utilities, Inc. or any other entity consolidated with MW&S for the purpose of federal income taxes, shall be made available to the Board to the extent the Board determines that the information contained therein is necessary to resolve any


regulatory or financial issues impacting MW&S. This provision shall not impair the rights of any of the Parties in any other proceeding.

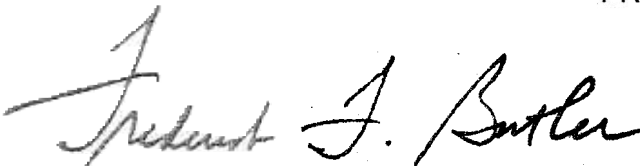
- i) The corporate headquarters of Utilities, Inc. shall remain in the United States.
- j) No layoffs or involuntary severance, except for cause, shall take place at MW&S for two years following the close of the transaction. A temporary reduction in employment levels shall not constitute a violation of this provision.
- k) Within sixty days of closing, MW&S will inform customers of the consummation of the transaction and of the continuing oversight of the Board and the New Jersey Department of Environmental Protection, the continued compliance with all New Jersey laws and regulations, and the continuity of the customer service and customer relations procedures of MW&S. For a period of twelve months following the closing of the transaction, MW&S shall file quarterly reports with the Board listing all customer complaints received during the prior quarter.
- l) MW&S shall maintain capital structures, dividend policies and use their best efforts to achieve financial target ratios consistent with at least the retention of Utilities, Inc.'s current debt quality and ratings. Any lowering of these debt qualities or ratings, resulting in the debt instruments of Utilities, Inc. falling below investment grade shall be reported to the Board within 24 hours.
- m) MW&S shall maintain a level of capital investment and best operating practices sufficient to ensure safe, adequate and proper service in compliance with applicable regulations and statutes and in accordance with prudent utility practice.
- n) MW&S will continue to implement and construct capital projects necessary for the provision of safe, adequate and proper service.
- o) For a minimum of five years following the date of this Order, the majority of the individuals comprising the current Board of Directors of MW&S shall remain in place, unless they leave the employ of Utilities, Inc. In the event that a majority of the Board members resign from Utilities, Inc. within the five year period, then the new Board of Directors of MW&S shall include at least one member who is a regional representative of Utilities, Inc. familiar with the New Jersey operations.
- p) MW&S shall file a report with the Board fully describing any changes in the corporate structure and corporate relationships of Utilities, Inc. in sufficient detail to allow the Board's Division of Audits to monitor affiliate relationships.
- q) MW&S shall not disclose confidential customer information, including names, addresses, and phone numbers to any affiliate of Utilities, Inc. for marketing or non-utility business purposes.
- r) The authority granted herein shall become null and void if the transaction is not completed within one hundred and eighty (180) days of the date of receipt of all required approvals.

Pursuant to N.J.S.A. 48:2-51.1, the Board HEREBY APPROVES the indirect acquisition by Hydro Star of equity ownership of Utilities, Inc. by acquiring all of the issued and outstanding shares of Nuon Global Solutions USA, Inc. subject to compliance with the foregoing conditions.

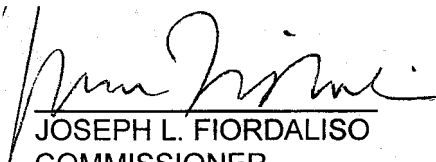
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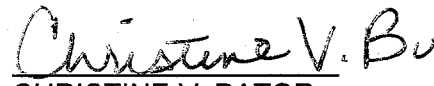
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BY:


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FREDERICK F. BUTLER
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER

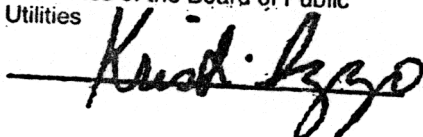

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



SERVICE LIST

In the Matter of the Joint Petition of Utilities, Inc. and Montague Water and Sewer Companies for Approval of a Change in Control of Certain New Jersey Public Utilities

Docket No. WM05090800

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